

Consideration of amendments to nonrule policy document, Information Bulletin #55, regarding receipt of citizen comments filed with the Natural Resources Commission; Administrative Cause No. 10-080A

The Division of Hearings is seeking the Commission's adoption of certain proposed amendments to Information Bulletin # 55. These proposed amendments are intended to address the following three areas.

1. Disposition of Comments Received Before Publication of the Notice of Intent or Posting on the NRC Website:

Section 4 of Information Bulletin #55 specifies that only those comments that are received after publication of the Notice of Intent or posting on the Commission's website are to be considered by a Commission hearing officer. Frequently, the Division of Hearings receives comments prior to the occurrence of one of those threshold events when the Department has only begun considering a rule action. At that time the Department's ideas are not sufficiently crystallized for any action by the Commission but the public's comments at this stage could potentially be important to the Department's further action with respect to the rule action.

For this reason, the Division of Hearings is recommending that Section 4 be amended to reflect that comments received before the occurrence of one of the threshold events will be forwarded to the Department's Division that is considering the rule action. If the Division of Hearings has not been informed of any anticipated rule action by a Department Division, the Division of Hearings personnel will refer the person offering the comment to Information Bulletin #7, which provides a process for filing a citizen's petition for a rule or nonrule policy amendment.

2. Clear Identification of the Methods by which Comments May be Submitted:

The Division of Hearings is recommending that Section 5 of Information Bulletin #55 be amended to specify that comments will be accepted by regular mail, by telephone only if authorized at preliminary adoption, and by electronic means only through the online rule comment form.

3. Removes Obligation of Division of Hearing's Personnel to Encourage an Individual to Provide Required Information

At the present time when a comment is received that does not provide the required identification of residency information, Division of Hearings personnel is obligated by Section 2, subsections (B) and (C), to make a "reasonable effort" to acquire the omitted information. Experience reveals that anonymous comments are commonly offered by the most fervent individuals and staff attempts to obtain the necessary information is commonly met with rude and occasionally offensive behavior and language.

The Commission's web site contains a page where all proposed rules are available for review and comment. At that page is a link to Information Bulletin #55 that provides all individuals the ability to be informed about how to submit a comment. Therefore, the Division of Hearings is also recommending that Section 2, Subsections (B) and (C) be amended to eliminate the requirement for Division staff to make any effort to obtain omitted information.

NATURAL RESOURCES COMMISSION
Information Bulletin #55 (~~First~~ **Second** Amendment)
~~January 1, 2009~~ **August 1, 2010**

SUBJECT: Citizen Comments to Hearing Officers

1. Purposes

The primary purpose of this personnel directive is to encourage consistency, transparency, and efficiency in the development of hearing officer reports by employees of the Division of Hearings to the Natural Resources Commission. An employee of the Department of Natural Resources or another person making a report to the Commission may also consider this directive as guidance.

2. Anonymous Comments

(A) A hearing officer shall not include comments in a report, or consider the comments in an analysis, unless made by an individual who provides:

(1) The individual's name. An individual who uses a pseudonym does not satisfy this requirement unless the pseudonym is that of a recognized journalist or author.

(2) At least one of the following:

(i) For an Indiana resident, the city, town, or county of residence.

(ii) For a nonresident of Indiana who is resident of the United States, the state of residence.

(iii) For a nonresident of the United States, the country of residence.

~~(B) If an individual described in subdivision (A) offers a comment in person, by telephone, or by e-mail, the hearing officer should make a reasonable effort to encourage the individual to provide information sufficient to resolve any anonymity.~~

~~(C) The Commission's webpage for public comments shall include language notifying individuals who wish to make comments that~~ Personal, contact, and any other information submitted on a comment form or in an attachment ~~would~~ **may** be provided to the Commission and the Department of Natural Resources and ~~would~~ **may** be publicly disclosed and searchable on the Internet and in a paper docket.

3. Comments Not in English and Nonstandard Language

(A) Except as provided in this subdivision, a hearing officer shall not include comments in a report, or consider the comments in an analysis, unless made in English. Foreign phrases commonly used by the public or within a profession may be included.

(B) A hearing officer may exclude from a report, and consideration in an analysis, comments containing excessive foul, offensive, or other nonstandard language.

~~(C) If a comment is excluded under subdivision (A) or (B), the hearing officer shall make a reasonable effort to encourage the individual to resubmit the comment with language that would be included.~~

4. **Processing** ~~Comments Subsequent to Posting of "Notice of Intent" or Posting of Language Given Preliminary Adoption~~

(A) To help assure that comments included in a report are directed to an active rule proposal, a hearing officer shall not include comments except after the earlier of the following:

(1) publication by the Legislative Services Agency of a "Notice of Intent to Adopt" a proposed rule; or

(2) posting on the Commission's website of language given preliminary adoption for a proposed rule.

(B) If comments are received that relate to other than active rule proposals under subsection (A), the Division of Hearings shall do one of the following:

- (1) if the Division of Hearings is informed the Department is contemplating a rule action, the comment shall be forwarded to the appropriate Division or Bureau of the Department of Natural Resources; or
- (2) if the Division of Hearings has no knowledge of any contemplated rule action by the Department, the person offering the comment shall be referred to Information Bulletin #7 (Second Amendment) "Petitions for Rule Change and for Nonrule Policy Document Change".

5. Receipt of Electronic Comments (E-Mail) and Improved Mechanisms

~~The current practice is to establish an e-mail linkage through the Commission's website for a person to comment to a hearing officer with respect to rule proposals or other matters having the likelihood of significant public interest. The practice requires the Division of Hearings to open, copy, and insert the e-mail in a hearing officer's report. Particularly for matters of great public interest, the practice is inefficient. The Division of Hearings shall continue exploration of access to and implementation of improved mechanisms for the Commission's website by which to receive and assemble citizen comments.~~

The Commission shall accept comments filed by:

- (1) electronic mail (email) using the online comment form accessible at <http://www.in.gov/nrc/2377.htm>.
- (2) telephone, if authorized by the Commission upon preliminary adoption.
- (3) regular mail, to be sent to the:

**Natural Resources Commission
Division of Hearings
Indiana Government Center North
100 North Senate Avenue, Room N501
Indianapolis, Indiana 46204-2200**

6. Continuing Updates

The Division of Hearings shall continue exploration of access to and implementation of improved mechanisms for the Commission's website by which to receive and assemble citizen comments. The Division of Hearings shall periodically update the Commission concerning challenges and opportunities with respect to receipt and incorporation of citizen comments in hearing officer reports, ~~particularly as the challenges and opportunities result from advancing electronic technology.~~ The next update shall be provided not later than ~~March~~ **May 2010 2012.**

7. History

The original version of this Information Bulletin was published on August 15, 2007. Modifications for the current version include provisions for the use of English, the avoidance of nonstandard language, and inclusion of citizen comments in a report only if made after publication of a "Notice of Intent to Adopt" or posting of language given preliminary adoption. With technological advances since August 2007 regarding the processing of email comments, some references were deleted regarding initiatives to seek improved mechanisms.